

HOUSE JOINT RESOLUTION NO. 40

(By Delegate Kump)

[Introduced February 17, 2011; referred to the
Committee on Constitutional Revision then the
Judiciary.]

Proposing an amendment to the Constitution of the State of West
Virginia, amending section 7, article VI thereof, relating to
creating a legislative districting and apportionment
commission for the apportionment of the Senate and House of
Delegates after census; numbering and designating such
proposed amendment; and providing a summarized statement of
the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of
the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment
to the Constitution of the State of West Virginia be submitted to
the voters of the state at the next general election to be held in
the year 2012, which proposed amendment is that section 7, article
VI thereof be amended, to read as follows:

ARTICLE VI. THE LEGISLATURE.

1 **§7. After census, delegate apportionment; creation of legislative**
2 **districting and apportionment commission.**

3 ~~After every census the delegates shall be apportioned as~~
4 ~~follows: The ratio of representation for the House of Delegates~~
5 ~~shall be ascertained by dividing the whole population of the state~~
6 ~~by the number of which the House is to consist and rejecting the~~
7 ~~fraction of a unit, if any, resulting from such division. Dividing~~
8 ~~the population of every delegate district, and of every county not~~
9 ~~included in a delegate district, by the ratio thus ascertained,~~
10 ~~there shall be assigned to each a number of delegates equal to the~~
11 ~~quotient obtained by this division, excluding the fractional~~
12 ~~remainder. The additional delegates necessary to make up the~~
13 ~~number of which the House is to consist, shall then be assigned to~~
14 ~~those delegate districts, and counties not included in a delegate~~
15 ~~district, which would otherwise have the largest fractions~~
16 ~~unrepresented; but every delegate district and county not included~~
17 ~~in a delegate district, shall be entitled to at least one delegate.~~

18 (a) In the year following each decennial census of the United
19 States or when required by the United States or by court order, a
20 legislative districting and apportionment commission shall be
21 appointed:

22 (1) To divide the state into consecutively numbered
23 legislative districts that conform to the provisions of this d

24 (2) To divide the state to create as many congressional

1 districts as there are representatives in congress apportioned to
2 this state.

3 (b) Legislative districts shall be established in accordance
4 with the Constitution of the United States of America and the
5 Constitution of West Virginia and shall be as nearly equal in
6 population as practical, but may not deviate more than one percent
7 in population between districts.

8 (c) The legislative districting and apportionment commission
9 shall be composed of seven members. A member of the commission:

10 (1) Shall be a registered voter in this state for at least
11 three years preceding appointment to the commission;

12 (2) Shall affirm that the member is committed to applying the
13 provisions of this section in an honest, independent and impartial
14 manner and to upholding public confidence in the integrity of the
15 redistricting process; and

16 (3) During the three years immediately preceding appointment
17 to the commission may not have been appointed to, elected to, or a
18 candidate for any other public office or served as an officer in a
19 political party; and may not have served as a registered lobbyist
20 or as an officer of a campaign finance entity.

21 (d) On or before January 1 in the year following a decennial
22 census, the Supreme Court of Appeals shall nominate a pool of
23 thirty candidates who are willing to serve and who meet the
24 qualifications for service on the commission. The pool of

1 candidates shall consist of:

2 (1) Ten candidates from the majority party;

3 (2) Ten candidates from the principal minority party; and

4 (3) Ten candidates who are not registered with any political
5 party or who are from a political party other than the majority
6 party or the principal minority party.

7 (e) On or before February 1 in the year following a decennial
8 census, or within fifteen days after legislative apportionment or
9 congressional districting is required by law or by court order,
10 from the pool of candidates established by the Supreme Court of
11 Appeals:

12 (1) The President of the Senate shall make one appointment;

13 (2) The Minority Leader of the Senate shall make one
14 appointment;

15 (3) The Speaker of the House of Delegates shall make one
16 appointment; and

17 (4) The Minority Leader of the House of Delegates shall make
18 one appointment.

19 (f) Following the appointment of the four members specified
20 under subsection (g) of this section, the Secretary of State shall
21 convene a meeting of those four appointees who then by majority
22 vote shall select from the pool of candidates established by the
23 Supreme Court of Appeals three additional members of the
24 commission. The three additional members may not result in the

1 commission having more than two members who are affiliated with the
2 same political party or who are not affiliated with any political
3 party. Once it is fully constituted, the commission, by majority
4 vote, shall elect its chair from among its members. The commission
5 shall establish rules and procedures to govern its operations.

6 Any official act of the commission shall require at least four
7 affirmative votes. Any meeting and any record of the commission
8 shall be subject to applicable state law governing open meetings
9 and access to public information.

10 (g) On notice and after an opportunity for a hearing, a member
11 of the commission may be removed by the Governor, on advice and
12 consent of two thirds of the Senate, for substantial neglect of
13 duty, gross misconduct, or inability to discharge the duties of the
14 office.

15 If for any reason a member does not complete the term of
16 office, within thirty days after the vacancy, the Supreme Court of
17 Appeals shall nominate a pool of three candidates from which the
18 appointing authority who made the original appointment shall select
19 a new member to fill the vacancy.

20 (h) Within one hundred eighty days after the commission is
21 certified to the Secretary of State, the commission shall file with
22 the Secretary of State its final report, including all required
23 redistricting plans. Within fifteen days after the final report of
24 the commission is filed with the Secretary of State, the Attorney

1 General shall petition the Supreme Court of Appeals to review and
2 determine the validity of the apportionment plans. After the
3 Supreme Court of Appeals determines that the required plans are
4 valid, the commission shall be dissolved. If the commission does
5 not file its final report in a timely manner, including all
6 required plans, with the secretary of state:

7 (1) The commission shall be dissolved;

8 (2) The Attorney General shall, within five days, petition the
9 Supreme Court of Appeals to make the apportionment; and

10 (3) No later than the sixtieth day after the filing of the
11 petition, the Supreme Court of Appeals shall file with the
12 Secretary of State an order making the apportionment.

13 (i) A judgment of the Supreme Court of Appeals determining the
14 apportionment to be valid or ordering judicial apportionment shall
15 be binding on all citizens of the state.

16 If the Supreme Court of Appeals determines that the
17 apportionment made by the commission is invalid, the commission,
18 within twenty days after the ruling, shall adopt and file with the
19 Secretary of State an amended plan that conforms to the judgment of
20 the Supreme Court of Appeals.

21 Within five days after the filing of an amended plan, the
22 Attorney General shall petition the Supreme Court of Appeals to
23 determine the validity of the amended plan; or if the commission
24 has failed to file an amended plan, the Attorney General shall

1 report that fact to the Supreme Court of Appeals.

2 If the commission fails to file an amended plan or if the
3 Supreme Court of Appeals determines that the amended plan is
4 invalid: (1) The commission shall be dissolved; and (2) the
5 Supreme Court of Appeals shall, not later than sixty days after
6 receiving the petition of the Attorney General, file with the
7 Secretary of State an order making the apportionment.

8 (1) The commission shall have staff and other resources as
9 provided in the state budget.

10 *Resolved further,* That in accordance with provisions of
11 article eleven, chapter three of the Code of West Virginia, 1931,
12 as amended, such proposed amendment is hereby numbered "Amendment
13 No. 1" and designated as the "Legislature Reapportionment
14 Amendment" and the purpose of the proposed amendment is summarized
15 as follows: "To amend the state Constitution to create a
16 legislative districting and apportionment commission for the
17 purpose of determining the numbers of the members of the House of
18 Delegates and the Senate following every census."

NOTE: The purpose of this resolution is to amend the state Constitution to create a legislative districting and apportionment commission for the purpose of determining the numbers of the members of the House of Delegates and the Senate following every census.

Strike-throughs indicate language that would be stricken from the present Constitution, and underscoring indicates new language that would be added.